

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 3119 of 2015 (L)

PETITIONER(S):

**HI-CARE POLYMERS (P) LTD.,
PALAKUZZHA P.O., KOOZHATTUKULAM, MUVATTUPUZHA TALUK,
ERNAKULAM DIST, PIN-686 686,
REPRESENTED BY ITS GENERAL MANAGER &
AUTHORIZED SIGNATORY,
ROJI THOMAS, S/O.THOMAS, AGED 42.**

BY ADV. SRI.K.R.SUNIL

RESPONDENT(S):

- 1. THE MANAGING DIRECTOR,
KERALA MEDICAL SERVICES CORPORATION LTD.,
(A GOVERNMENT OF KERALA UNDERTAKING)THYCAUD P.O.,
THIRUVANANTHAPURAM-695 015.**
- 2. THE SECRETARY,
HEALTH DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**

**R1 BY ADV. SRI.M.AJAY, SC
R2 BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT. P1:-THE TRUE COPY OF THE ACKNOWLEDGMENT DTD 27/2/2013 ISSUED BY
THE DEPARTMENT OF INDUSTRIES, GOVERNMENT OF KERALA.**

**EXT. P2:-THE TRUE COPY OF THE CERTIFICATE OF INCORPORATION OF THE
PETITIONER.**

**EXT. P3:-TRUE COPY OF THE CERTIFICATE ISSUED BY THE BUREAU OF INDIAN
STANDARDS DTD 5/6/2014.**

**EXT. P4:-TRUE COPY OF THE CERTIFICATE ISSUED BY THE BUREAU OF INDIAN
STANDARDS DTD 12/6/2014.**

**EXT. P5: THE TRUE COPY OF THE REQUISITE PRE-QUALIFICATION FOR THE YEAR
2014-2015.**

**EXT. P6:-THE TRUE COPY OF THE E/TENDER DOCUMENT FOR THE PROCUREMENT
OF DRUG/SUPPLIES FOR THE YEAR 2015-2016**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 3119 of 2015

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Dated, this the 13th day of February, 2015

JUDGMENT

Clause 17 of Ext. P6 tender notification for the year 2015 - '16 insisting the bidder/participant to produce three years' BIS certification prior to the date of notification of tender for participating in the bid is under challenge in this writ petition. The contention is that the said clause was never in existence earlier as evident from Ext. P5 tender notification for the year 2014 - '15. Clause 17 stipulates possession of BIS certificate only in respect of non-drug products and such a stipulation is stated as incorporated for the first time, allegedly with a malafide intent, to promote somebody behind the curtain.

2. The petitioner is a private limited company incorporated under the relevant provisions of Indian Companies Act 1956, as evident from Ext. P2 certificate of registration. It is stated that the petitioner's company was established in the year 2009 and is

engaged in manufacturing of latex surgical gloves of different variants and the nature of activities stands certified by the Department of Industries, Government of Kerala vide Ext. P1 certificate dated 27.02.2013. Considering the quality, type, nature and such other relevant aspects; Exts. P3 and P4 licenses have been issued by the Bureau of Indian Standards (BIS), which are valid upto 04.06.2015 and 09.06.2015 respectively.

3. In the last year i.e. 2014 - '15, the first respondent notified tenders for procurement of drugs/supplies of different categories of consumables, including non-drug products as per Ext. P5 notification dated 28.01.2014. In respect of the present year i.e. 2015 - '16, Ext. P6 tender notification has been issued incorporating totally different clause (Clause 17), whereby BIS certification for the past three years is insisted, which according to the petitioner is only to eliminate the parties like the petitioner and to award contract to the suppliers of the choice of the respondents. This according to

the petitioner reflects a malicious intention and extraneous consideration, which in turn is under challenge.

4. A detailed statement has been filed by the first respondent, pointing out that the idea and understanding of the petitioner is not correct or sustainable and that the relevant clause has been incorporated in Ext. P6 only as a measure to ensure quality of the supplies to be effected. It is stated that the first respondent company is a fully owned Government of Kerala undertaking; set up mainly to procure and distribute drugs and other supplies to the public health care institutions in the State. The terms and conditions of tenders are being stipulated and revised based on the exposure, experience and expertise gained year after year, with an intent to procure drugs and non-drug supplies at the best possible rates, without compromising on quality. It is also pointed out that in the case of drugs, there is an inbuilt standard/mechanism, such as conformity within the IP (Indian Pharmacopoeia) to be complied with by the licensed

manufacturers. But in the case of non-drug items, rigor is much lesser and even though BIS has set standards for many non-drug items as well, many of the manufactures are selling and making such products without claiming to adhere to the BIS standards. This was the course that was being pursued by the petitioner as well, who admittedly commenced production in the year 2009, but obtained BIS certification only in the year 2014. It is pointed out that, because of the failure in maintaining quality standards, health care professionals such as Doctors and Nurses who are the end users of most of these products quite often refuse to use these products and get such materials procured by the patients themselves from the open market; thus defeating the very purpose of existence of the first respondent company.

5. Heard the learned counsel for the petitioner, the learned standing counsel for the first respondent and the learned Government Pleader appearing for the second respondent as well.

6. It is brought to the notice of this Court, with reference to the contents of the statement filed by the first respondent, that the said respondent Company sought to ensure quality of the product in the field of non-drug products as well and it was accordingly, that a minimum established identity of having BIS certification for a period of three years is sought to be insisted. In fact, Ext. P5 tender notification was issued in the year 2014 - '15, incorporating clause 17 to the effect that the parties who intend to participate in the bid requires BIS certification. But, subsequently on finding it necessary to incorporate a condition to have such certification for a period of three years, Ext. P5 tender was cancelled and re-tender notification was issued on 11.03.2014, a copy of which has been produced as Annexure I. The petitioner has no case that the petitioner was qualified as on the date of either Ext. P3 or Annexure I or that the petitioner had submitted any tender in response to the said notification. Exactly similar clause (Clause 17) as incorporated in Ext. P6

tender notification was incorporated in the previous year (as it appears in Annexure I) as well. It is stated that the condition imposed is reasonable and justifiable, with intent to meet the objective sought to be achieved and that it is not assailable under any circumstances.

7. The first respondent has specifically contended in paragraph 6 of their statement that the respondent company has a system, whereby a 'pre-bid meeting' is organized; during which time prospective tenderers can seek clarifications, submit objections or seek modifications of any tender terms/conditions and that all such suggestions/objections received at the pre-bid meeting are seriously considered and those which are found to be just and proper would be incorporated in the tender conditions by way of amendments. It is pointed out that, in the present year also, such a pre-bid meeting was held on 15.01.2014. But the petitioner had not turned up and no suggestion/objection was raised at any point of time.

8. After hearing both the sides, this Court finds that no specific plea of malafide has been raised by the petitioner and no attempt has been made to have it established some how or the other. It is not for the petitioner to dictate terms to the respondent company, which is a Government owned company, as to how tender has to be floated and what the conditions should be. This Court finds it difficult to hold that Clause 17 of Ext. P6 places unreasonable restrictions or that it is arbitrary or violative of any of the rights of the petitioner, much less any fundamental rights.

The Writ Petition fails and the same is dismissed accordingly.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd